

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-363-E ORDER NO. 2022-160

MARCH 4, 2022

IN RE: Valli Finney, Complainant/Petitioner v.)	ORDER DENYING MOTION
Duke Energy Progress, LLC,)	TO DISMISS AND GRANTING
Defendant/Respondent)	CONFIDENTIAL TREATMENT

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Motion of Duke Energy Progress, LLC (“DEP”) to Dismiss the Complaint against it filed by Valli Finney on November 30, 2021.

II. DISCUSSION

Duke Energy Progress, LLC filed a Motion to Dismiss the Complaint of Valli Finney in Docket No. 2021-363-E on December 30, 2021. The grounds upon which DEP is seeking dismissal are:

- 1) the Complaints fail to allege any violation of a Commission-jurisdictional statute, rule, regulation or order and
- 2) the Complaints are moot because the actionable relief requested has been provided to the Complainant.¹

Along with the Motion to Dismiss, DEP also requests confidential treatment of the confidential version of this motion and its exhibits pursuant to S.C. Code Ann. Reg. 103-804(S)(2), the S.C. Freedom of Information Act—S.C. Code Ann. § 30-4-10, et seq.—and

¹ Motion for Dismissal at p. 1.

the Family Privacy Protection Act—S.C. Code Ann. § 30-2-10, et seq.—on the basis that they contain customer-specific account information.

In support of its Motion to Dismiss, DEP alleges that the Complainant is an authorized user of an account held by her son, Matthew Finney. On November 12, 2020, Mrs. Finney called to obtain her account balance and, during that interaction, stated that her uncle died. Mistakenly, the DEP customer service representative placed a flag on the account showing the owner of the customer account was deceased.

On September 10, 2021, the account – which was enrolled in DEP’s Equal Payment Plan – was removed from the Equal Payment Plan.

On October 25, 2021, Mrs. Finney called to ask why the account was removed from the Equal Payment Plan. The error was discovered, and the account was enrolled in the Budget Billing Program. DEP asserts that a handwritten apology and gift cards were sent to Mrs. Finney explaining the situation and the result.

On November 23, 2021, Mrs. Finney contacted DEP and advised that she had not received the gift cards or the apology.

On November 30, 2021, Mrs. Finney filed the Complaint which is now before the Commission.

III. FINDINGS OF FACT

1. The Commission finds that the Complainant’s account was on the Equal Payment Plan prior to being erroneously removed by DEP.

2. While the Equal Payment Plan has been discontinued, customers still enrolled in the Equal Payment Plan continue to be able to be served on that plan.

3. The issue of whether any benefit or difference has been improperly removed from the Complainant by removing the household account from the Equal Payment Plan is remaining.

IV. CONCLUSIONS OF LAW

A motion to dismiss should be granted whenever a plaintiff fails “to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRCF. A court’s “ruling on a 12(b)(6) motion must be based solely upon the allegations set forth on the face of a complaint.” *Stiles v. Oranato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). “Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” *Brown v. Theos*, 338 S.C. 305, 309–10, 526 S.E.2d 232, 235 (Ct. App. 1999).

Here, the Movant DEP failed to meet the standard, since there is an issue of fact outstanding which could plausibly reveal a measure of injury to the Complainant due to the improper action of DEP. Therefore, the Commission concludes that it must deny the Motion to Dismiss.

Regarding the Motion for Confidential Treatment, DEP has satisfactorily alleged that sensitive, personally identifiable information is contained in the identified documents and exhibits. Absent objection from any party, that Motion is appropriately granted.

V. ORDERING PROVISIONS

IT IS THEREFORE ORDERED:

1. The request of Duke Energy Progress, LLC for confidential treatment of certain portions of its Motion to Dismiss and Exhibits is granted.
2. The Motion to Dismiss filed by Duke Energy Progress, LLC on December 30, 2021, is denied.
3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina